In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF APPELLANT, ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL.

GUY C. CALDEN,
22 Battery Street, San Francisco 11, California,
Counsel for Appellant.

CLARENCE E. TODD,
[illegible] Street, San Francisco 4, California,
Of Counsel.

Subject Index

Table of Authorities Cited

Statutes and Constitutional Provisions **Pages**

Texts

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I.

JURISDICTION.

This Appeal, like the other Appeals from the judgments herein which are presented by other briefs, is an appeal from a judgment of conviction dated December 20, 1941 (printed record, Volume III, pages 1366 to 1368) under an indictment charging violation of Section 1 of the Sherman Anti-Trust Act, 15 U. S. C.,

Section 1 (R. Vol. 1, page 4, ff.). The jurisdiction of the District Court comes under 28 U. S. C., sec. 41, subdivision (2). The jurisdiction of the Circuit Court of Appeals was under 28 U. S. C., sec. 225, and was invoked by notice of appeal served and filed December 26, 1941. (R. Vol. IV, pages 1411 to 1415.)

The case is now before this Court after Writ of Certiorari granted, pursuant to the decision of the Circuit Court of Appeals for the Ninth Circuit which affirmed the judgment against the labor organizations and certain individual defendants. (144 Fed. (2d) 546.)

II.

STATEMENT OF THE CASE AND ISSUES AS TO THIS APPELLANT-DEFENDANT.

This case required five weeks for trial before a jury and the evidence covers many hundreds of pages. The story of the transactions sued upon is not presented in chronological order. This Appellant, Alameda County Building and Construction Trades Council, was indicted along with many other labor organizations for having entered into an "unlawful combination and conspiracy" to violate the Sherman Act and for having performed certain unlawful acts pursuant thereto.

The Alameda County Building and Construction Trades Council is mentioned specifically in paragraph 17 of the indictment, pages 19 and 20 of the printed record, and is alleged to be "a voluntary unincorporated association of individuals". It is also charged

in that paragraph with being "advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the County of Alameda, California." Its membership as alleged in that paragraph, "consists of delegates from the affiliated local unions".

The evidence by way of stipulation is that this Appellant is "a voluntary unincorporated association", R. 262, 264. Pursuant to subpoena this Defendant presented its records in Court, and Charles R. Gurney, Secretary-Treasurer, was interrogated thereon. The Charter of the Council was presented as Exhibit No. 102 for identification; No. 104 for identification is a mimeographed copy of the minutes; No. 105 for identification is a communication from the Millmen's Union to the said Appellant; and folders marked 106 and 107 contain minutes of the San Francisco Building and Construction Trades Council received weekly by this Appellant Council.

It was stipulated as to all Defendants that documents might be presented and read in whole or in part but that only those portions actually read to the jury should be in evidence. (R. pp. 211-212.) Neither the Constitution or By-Laws of this Appellant were read in evidence. The record contains evidence of certain things done by Mr. Gurney, the Secretary (R. pp. 204-205, 332-333), and by Charles Roe, Assistant Business Agent (R. pp. 344-346), and by the board of business agents (R. pp. 331-332, 338-342, 346-347), but as stated, there is no evidence of the authority conferred on any officer or agent of the Council. At page 205, it appears affirmatively from the testimony of

Mr. Gurney that Mr. Roe, the Business Agent, had never, as far as Mr. Gurney could recall, been instructed to negotiate any labor contract.

At page 929, Vol. II, of the record it appears that when the carpenters' unions became affiliated with this Building Trades Council, the carpenters reserved "our right to negotiate our own agreements."

This constitutes the evidence specifically directed to this Defendant. The record shows from the testimony of many witnesses and from the production of documents that the Carpenters' unions and the Bay Counties District Council of Carpenters, Defendants herein, entered into a number of agreements with employers and employer groups relating to wages, hours and working conditions. These agreements will be discussed in great detail in the briefs of other Defendants, but not a single one of these agreements was negotiated directly or indirectly by this Appellant. (R. p. 944, Vol. II), nor does the signature of this Appellant appear on any one of the agreements.

Under this state of the evidence, the issues as to this Appellant, Alameda County Building and Construction Trades Council are:

First: Whether this Council was a party to any of the agreements alleged to constitute the conspiracy herein, or is shown to have committed any unlawful act.

Second: Whether any of the combinations or agreements or acts done by any of the labor Defendants constitute violations of the Sherman Act.

Third: Whether the acts charged against these Appellants are protected by the Bill of Rights of the Federal Constitution.

This Appellant along with the other labor Defendants demurred to the indictment (R. p. 42); demanded a Bill of Particulars (R. p. 1222); moved to dismiss because of the insufficiency of the indictment to state an offense (R. pp. 140, 141); concurred in the requests for instructions as presented by other labor Defendants (R. p. 1171); proposed certain instructions on its own behalf (R. p. 1193); moved for a new trial (R. p. 1209); the rulings in all of the above being adverse to this Appellant.

III.

ARGUMENT.

A. THIS APPELLANT COULD NOT HAVE BEEN GUILTY OF A CONSPIRACY CONSISTING OF WRITTEN AGREEMENTS TO WHICH THIS APPELLANT WAS NOT A PARTY DIRECTLY OR INDIRECTLY.

In the Opinion of the Circuit Court of Appeals, affirming the judgment of the District Court, at 144 Fed. 2d page 552, bottom of column 1 and top of column 2, the Court said:

> "The Alameda County Building and Construction Trades Council attacks the sufficiency of the evidence as to it in the same manner. We find ample evidence of the Council aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list

for violating the agreements from which the jury could find participation in the conspiracy. The trial court did not err in refusing an instructed verdict for this appellant."

It will be noted that the Court expressly refrains from stating that this Appellant was a party to any of the agreements alleged to have been unlawful. We appeal to the entire record to support our contention that there was no such evidence, and we challenge attorneys for the Government to point out any evidence that this Appellant signed any of the agreements or even that it gave its "approval".

The position of this Appellant is largely parallel to that of the Appellant, United Brotherhood of Carpenters and Joiners of America, whose briefs are on file and whose argument will be presented orally to this Court. The United Brotherhood was not a party to any of the contracts, although it may have given its approval to them, or some of them, which this Appellant, Alameda County Building Trades Council, never did. We refer to, approve, adopt and incorporate herein, so far as possible, as arguments on behalf of this Appellant, all the arguments presented and to be presented by the United Brotherhood of Carpenters and Joiners of America, particularly to the point that the evidence herein is completely insufficient to hold either of these associations criminally liable as a participant in the alleged conspiracy.

B. THE ACTS CHARGED AGAINST THIS APPELLANT ARE NOT ONLY PROTECTED AGAINST CRIMINAL PROSECUTION BY THE CLAYTON AND NORRIS-LA GUARDIA ACTS, BUT ALSO BY THE BILL OF RIGHTS OF THE FEDERAL CONSTITUTION.

It will be noted from the portion of the Opinion of the Circuit Court of Appeals quoted above, that this Appellant is held criminally liable only because of

> "aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list for violating the agreements * * *"

144 Fed. (2d) at page 552.

The only overt acts charged against Appellants for the "enforcement" of the agreement, consisted of peaceful picketing. The Circuit Court of Appeals also mentions "determining whether certain dealers should be placed on the unfair list" as unlawful on the part of this particular Appellant.

Now there would seem to be no question that the acts charged against Appellants here come within the protective clauses of the Norris-La Guardia Act, U. S. Code, Title 29, section 104; although the Government contends that these acts so immunized by the Norris-La Guardia Act are in turn deimmunized by the penal provisions of the Sherman Act. It is our contention that if there is any actual conflict between the two statutes, the Norris-La Guardia Act, of course, must prevail, being later in time, but we wish to advance another argument in favor of the rights of Appellants in this labor dispute to the normal, peaceful activities of labor unions in labor disputes—that is, to refuse to work on substandard material, to urge their fellows

not to work and to advertise to the public in normal peaceful ways of such decision on their part. We contend that regardless of the express language of the Norris-La Guardia Act, protecting these rights of labor in labor disputes, these Acts have long been recognized as within the protection of the Bill of Rights, and in particular of the First Amendment to the Federal Constitution.

In *United States v. Hutcheson,* 312 U. S. 219, which was a prosecution of labor unions and individuals under the Sherman Act, because of a strike and a boycott, in which this Court held that the activities did not constitute a violation of the Sherman Act, Mr. Justice, now Chief Justice, Stone said in his concurring opinion, at page 243:

> "the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress. See Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093."

In *Senn v. Tile Layers,* 301 U. S. 468, not a Sherman Act case, but a case involving the right of peaceful picketing and the construction of a statute of the State of Wisconsin, with regard thereto, this Court said at page 478:

> "Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

Now it is earnestly submitted that if peaceful picketing is a constitutional right, which this Court has over and over declared it to be, then no statute, State or National, can make it unlawful. In *Thornhill v. Alabama,* 310 U. S. 88, this Court set aside a Statute of the State of Alabama which sought to prohibit this particular form of the exercise of free speech.

In *Carlson v. California,* 310 U. S. 296, this Court in a companion case to the one last mentioned, struck down a county ordinance from the State of California, containing a similar ban against peaceful picketing, and the ruling of this Court was on constitutional grounds.

In *Swing v. American Federation of Labor,* 312 U. S. 321, this Court reversed an injunction and expressly disapproved the policy of the State of Illinois not, however, expressed in a statute, but basing its decision on the same ground, namely, that the right of peaceful picketing, even in the absence of what in Illinois practice was considered to be a labor dispute, was protected by the Bill of Rights. The Court said at page 326:

> "The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state."

In *Bakery and Pastry Drivers v. Wohl,* 315 U. S. 769, this Court similarly disapproved an injunction against a secondary boycott arising out of a labor dispute, although the injunction was in accord with

the policy of the State of New York as expressed in the New York Statutes. This Court did not invalidate or annul the statute, but merely provided that constitutional rights must be protected regardless of any language of a statute or of any feature of the state practice which might seem to be contrary.

C. THE CONSTITUTIONAL RIGHT OF FREE SPEECH CONTROLS AND SUPERSEDES STATUTORY ENACTMENTS WHERE THE SAME MAY BE IN CONFLICT.

The constitutional provision protecting the right of free speech as expressed in peaceful picketing should be applied in the case at bar. It will be noted that Chief Justice Stone, in the language cited above in the *Hutcheson* case, indicated that this constitutional right can readily be protected within the framework of the Sherman Act as written, that is to say, without any holding that any part of the Act is unconstitutional.

Similarly, in *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769, this Court had no difficulty in protesting the right of the Bakery Drivers to conduct a boycott of an unfair product which right of boycott was assailed under the New York statute, by holding that the New York Court was in error in believing that, under the terms of the New York Act, no labor dispute could exist without a controversy between an employer and his actual employees; at 315 U. S. 769 at 774, this Court said:

> "* * * one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

The conception of this Court of the controversy in the *Wohl* case is further explained by a portion of a paragraph from the case of *Carpenters v. Ritter's Cafe*, 315 U. S. 722, where this Court said, at page 727:

> "The dispute there related to the conditions under which bakery products were sold and delivered to retailers. The business of the retailers was therefore directly involved in the dispute. In picketing the retail establishments the union members would only be following the subject matter of their dispute."

All that Defendants were doing in the case at bar was what the *Wohl* case Defendants were doing, that is, following the subject matter of the dispute, the substandard material, produced either in or out of California, under lower wage scales. To be sure, the dispute was not between all the workers on one side and all the employers on the other, it was between these A. F. of L. carpenters and all the employers and others who handled the substandard goods, a complete parallel to the *Wohl* case controversy.

To say that this effort to protect labor standards was laudable and legal so long as all the employers resisted the effort, but became a criminal offense as

soon as peace was declared between employers and employees, is as if the Constitution of the Peace Organization which is to follow this war, should be confined to methods of making war, with no encouragement or assistance to the processes of Peace.

This effort of these workers to protect their wage standards, is in exact accord with the public policy of America as expressed in the Fair Labor Standards Act and in Minimum Wage and Prevailing Wage legislation throughout the country. This type of legislation, both Federal and State, has been approved over and over again and there is no question that the protection of labor standards by law is now the established policy in America.

Where workers and employers are following the established public policy of the nation, it is unthinkable that they should be held criminally liable for such acts and conduct.

This Court, without in any way questioning the constitutionality of the Sherman Act, can and should rule, according to the concurring opinion of Chief Justice Stone in the *Hutcheson* case, cited supra, that the constitutional right of these appellants, one and all, to publicize the fact that certain materials in the San Francisco Bay area, whether manufactured in the area or brought in from another state, was substandard and therefore unfair, was and is protected by the First Amendment to the Federal Constitution.

It is only where statutory enactments have had for their sole purpose the abridgment of constitutional

rights that this Court has found it necessary to annul the statute completely. Such statutes and municipal ordinances were considered in *Thornhill v. Alabama, Carlson v. California,* and in the group of cases reported under the name of *Schneider v. State,* 308 U. S. 147, involving ordinances of New Jersey, California, Wisconsin and Massachusetts.

The Sherman Act, having been held constitutional as a means of regulation of interstate commerce, should continue to be enforced so long as it remains on the statute books, but neither this nor any other legislative enactment can, under the plain provisions of the First and Fourteenth Amendments, abridge these constitutional rights.

D. ALL METHODS OF THE EXERCISE OF FREE SPEECH ARE FACETS OF THE SAME PRINCIPLE.

It is significant that the First Amendment protects the right of freedom of religion, free speech, free press, freedom of assemblage and freedom of petition, not only in the same section, but in the same sentence, in fact, in the same clause, as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Therefore, this Court has considered all these rights as interdependent, and in cases involving one of the

rights has very frequently relied on decisions which have upheld one or more of the other rights. This Court, in *Milkwagon Drivers v. Meadowmoor Dairies,* 312 U. S. 287 at 293, stated the situation in this language:

> "* * * The whole series of cases defining the scope of free speech under the Fourteenth Amendment are facets of the same principle in that they all safeguard modes appropriate for assuring the right to utterance in different situations. Peaceful picketing is the workingman's means of communication."

In *Near v. Minnesota,* 283 U. S. 697, this Court, speaking through Mr. Chief Justice Hughes, found it necessary to set aside and annul a statute of the State of Minnesota which would have permitted an injunction against a publication. The Court said at page 707:

> "It is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action."

This decision, thus protecting freedom of speech and of the press is cited in *Thornhill v. Alabama,* 310 U. S. 88, at 95, the *Thornhill* case turning upon the right of free speech as expressed in peaceful picketing.

This interdependence of these rights or of these facets of the same right is illustrated by the fact that in the *Thornhill* case which upheld the right of free speech, expressed in peaceful picketing, the footnote

to the decision cites in support thereof the group of cases reported under the name of *Schneider v. State,* supra, and *Lovell v. Griffin,* 303 U. S. 444, all of which involved handbill ordinances; *De Jonge v. Oregon,* 299 U. S. 353, which was concerned with a state anti-syndicalism act, *Grosjean v. American Press Co.,* 297 U. S. 233, involving a state statute abridging freedom of press; *Near v. Minnesota,* 283 U. S. 697, wherein this Court through Mr. Chief Justice Hughes set aside a state statute of Minnesota abridging the freedom of the press, and other similar cases.

While the cases cited above have all involved unconstitutional or partially unconstitutional enactments or policies of states or municipalities, the constitutional inhibition against abridgment of these constitutional rights applies to Congress as well as to State Legislatures and Agencies, and this by the very language of the First Amendment which is a prohibition against abridgment of these rights by Congress. A discussion of this point is found at 11 American Jurisprudence 647, section 40, citing among other cases, *U. S. v. Butler,* 297 U. S. 1.

The argument of the prosecution in this case has been to the effect that the prohibitions of the Sherman Act take precedence of the protective clauses set out in the Norris-La Guardia Act, as well as those in the Clayton Act. The briefs of other Appellants herein will be found to discuss this proposition quite adequately. To be consistent, the Anti-Trust Division must also argue that the Sherman Act is superior to the Constitution, and this argument, if made, which,

of course, it will not be in so many words, would rely upon the necessity of preventing restraint of interstate commerce, whether or not this involves an abridgment of constitutional rights.

Now all of the various statutory enactments which this Court has invalidated as being in contravention of the First and Fourteenth Amendments, have relied upon this same argument of necessity. The *Schneider* case ordinances were based on the necessity of protecting the streets of a city against "littering" or cluttering up with handbills or papers, but the prohibition of the distribution of handbills, whether for educational or religious purposes, or by a picket, were held to constitute a violation of the right of free speech.

In *Lovell v. Griffin*, 303 U. S. 444, another handbill case, this right of free speech was connected by the Court with the right of free press, since the right to distribute is inseparably connected with the right of publication itself.

And in *Hague v. Committee*, 307 U. S. 496, the ordinance disapproved by this Court, prohibiting public meetings or parades without a license, was very strongly defended as involving the control by a municipality of its streets. This Court approved the object of control of the streets generally, but held that constitutional rights cannot be abridged or denied "in the guise of regulation" (307 U. S. 516), and *Davis v. Massachusetts*, 167 U. S. 43, while not expressly overruled, was at least not approved as to its state-

ment of this principle. Incidentally, in the *Hague* case, supra, the right of free speech was considered in connection with the right of assembly also covered in the First Amendment.

As a matter of fact, this Court has laid down in very succinct language the limitation on the power of a Legislature to abridge constitutional rights.

Through Mr. Justice Roberts, in *Herndon v. Lowry*, 301 U. S. 242, the Court said:

> "The power of a state to abridge freedom of speech and assembly is the exception rather than the rule, and the penalizing of utterances of a defined character must find its justification in a normal apprehension of danger to organized government."

While this ruling applied to a Statute of the State of Georgia, and was based on the Fourteenth Amendment, the direct mandate of the First Amendment necessarily applies a similar rule to Acts of Congress such as the Sherman Act.

The case of *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, is one of the decisions construing the often discussed Wisconsin Employment Peace Act. The statement is sometimes made that this Court in construing the Wisconsin Act has upheld provisions of that statute which abridge the constitutional rights of labor with regard to peaceful boycott and peaceful picketing. This Court said at page 745 regarding the scope of the injunction there considered:

> "The only employee or union conduct and activity forbidden by the State Board in this case was mass picketing, threatening employees desiring to work with physical injury or property damage, obstructing entrance to and egress from the company's factories, obstructing the streets and public roads surrounding the factories and picketing the homes of employees."

This case is mentioned as merely illustrating the care with which this Court has upheld law-making bodies in passing laws to restrict disorderly acts in connection with labor disputes; but has carefully upheld the constitutional rights to boycott and picketing as referred to in the *Senn, Thornhill, Swing, Wohl* and similar cases. (*Thornhill v. Alabama*, 310 U. S. 88; *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769; *Swing v. A. F. of L.*, 312 U. S. 321.)

Hotel and Restaurant Employees v. Wisconsin Employment Relations Board, 315 U. S. 437, was another case involving the Wisconsin Employment Peace Act, in which one of the opinions of the Supreme Court of Wisconsin had apparently restricted the right of employees to normal, peaceful, constitutional activities. (294 N. W. 632, see page 635, column 2, page 636, column 1.) These views, however, were modified by the Supreme Court of Wisconsin in the order denying rehearing. (295 Pac. 634, 635.)

When the case came before this Court, the order of the lower Court was upheld only in so far as it prohibited violent and clearly unlawful acts. This Court said at 315 U. S. 441:

"'The act does not limit the right of an employee to speak freely. * * * The term "picketing" as used in (the act) does not include acts held in the Thornhill case (supra) to be within the protection of the constitutional guaranty of the right of free speech. The express language of the act forbids such a construction. It clearly refers to that kind of picketing which the Thornhill case, 310 U.S. 88, 60 S. Ct. 745, 84 L. Ed. 1093, says the state has power to deal with as a part of its power "to preserve the peace and protect the privacy, the lives, and the property of its residents." * * * In this case it is undisputed that numerous assaults were committed by pickets, that the pickets acted in concert; that the fines of these pickets were paid by the unions, that ingress and egress to and from the premises of the employer were prevented by force and arms. It was at conduct of that kind that the statute was aimed. It is conduct of that kind that is dealt with in this case. It is conduct of that kind that is declared to be an unfair labor practice by the statute and from which the defendants are ordered to cease and desist. * * *' And on rehearing: 'Under the statute and the order of the board as interpreted and construed by the explicit language of the (previous) opinion, freedom of speech and the right peacefully to picket is in no way interfered with. The appellants could not be ordered to cease and desist from something they were not engaged in. * * * The picketing carried on in this case was not peaceful and the right of free speech is in no way infringed by the statute or the order of the board.' 236 Wis. 329, passim, 294 N. W. 632, 638, 295 N. W. 634, 635."

The *Angelos* case (*Cafeteria Employees v. Angelos*, 320 U. S. 293) decided by this Court on November 22, 1943, cleared away uncertainties as to the true nature of peaceful and lawful picketing by holding that even false statements made on the picket line in the absence of deliberate fraud could not be held to make the picketing unlawful. There is no such issue involved in the case at bar, but the *Angelos* case is mentioned here to illustrate the progress toward a true understanding of the nature of free speech as expressed in peaceful picketing.

In *Cantwell v. State of Connecticut*, 310 U. S. 296, this Court had before it a statute of the State of Connecticut prohibiting the solicitation of alleged religious, charitable and philanthropic causes without approval of the Secretary of Public Welfare. The appellant was also convicted of inciting a breach of the peace. The Court held that the appellant could not be required to obtain a license prior to making such solicitation, as such requirement would be a denial of his constitutional rights under the First Amendment, this Court saying at the end of the Opinion, page 311:

> "Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace

and order as to render him liable to conviction of the common law offense in question."

This Court did not deny the right of the State of Connecticut to enforce laws against breach of the peace, but this Court held emphatically that the peaceful acts shown by the evidence in that case showed no such incitement to breach of the peace within the police power of the State. Similarly in the case at bar, we do not question in any way the right of the Government of the United States, or of the State of California to prevent or punish violence or disorder, but since no violence was involved in the case, we have the situation clearly raised of the right of any governmental agency within the United States to prevent the exercise of constitutional rights protected by the First Amendment and, in particular, the right of peaceful boycott and peaceful picketing in connection with a labor dispute. The only picketing charged in this case is picketing of unfair products. *Bakery and Pastry Drivers v. Wohl*, supra.

In *Thomas v. Collins*, decided by this Court January 8, 1945, we find the latest recognition of the right of free speech in connection with labor activities. This case on its facts is not analogous to the case at bar, but on the principle for which we are arguing, it is highly important since it relies upon and reaffirms the cases heretofore cited herein: *Cantwell v. Connecticut, Schneider v. State, Thornhill v. Alabama, Senn v. Tile Layers, Hague v. Committee, Lovell v. Griffin*, and *De Jonge v. Oregon*, all cited supra.

The *Thomas* case holds that the State of Texas, in the absence of any clear and present danger to organized government, cannot restrict the right of free speech by a labor organizer, and, as pointed out above, relies upon the other cases just mentioned, discussing different facets of this same constitutional right.

The Congress of the United States, in the absence of such clear and present danger, cannot restrict this right of free speech in connection with the maintenance of labor standards, and no Federal Agency, District Court, or Circuit Court of Appeals can restrict such right of free speech.

It is not to be presumed that the Congress of the United States intended to overrule or modify the First Amendment to the Constitution by the passage of the Sherman Act, and its intent not to restrict these rights has been shown by the enactment of the Clayton and Norris-La Guardia Acts. We respectfully urge that this Court shall declare that Congress had no intention of restricting the constitutional right of free speech for the protection of labor standards, as shown by the evidence here; that such restriction was not and is not within the purview and intent of the Sherman Act, the Clayton Act and the Norris-La Guardia Act read together, and that the decision here appealed from be reversed.

As pointed out above, there was no evidence whatever to connect this Appellant, Alameda County Building and Construction Trades Council, with the so-called conspiracy, even if it should be held that this

agreement for the protection of wage standards was illegal as to the parties thereto, but we feel very strongly that on broad constitutional grounds, this Court should follow the concurring opinion of Chief Justice Stone in the *Hutcheson* case and hold that the Sherman Act does not and cannot prohibit the exercise of the right of free speech, as shown by the evidence herein.

Dated, San Francisco, California,
February 2, 1945.

Respectfully submitted,
GUY C. CALDEN,
Counsel for Appellant.

CLARENCE E. TODD,
Of Counsel.